

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
Telephone: 801 530-6600  
Facsimile: 801 530-6980

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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**THE MATTER OF:**

**The Thornwater Company, L.P., CRD  
#36195;**

**Respondent.**

**ORDER TO SHOW CAUSE**

**Docket No. SD-02-0144**

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**TO:** The Thornwater Company, L.P.  
99 Wall Street-11th Floor  
New York, NY 10005

It appears to the Director ("Director") of the Utah Division of Securities (the "Division") that The Thornwater Company, L.P., CRD #36195 ("Respondent") has engaged in acts and practices that constitute violations of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. ("the Act"). Those acts are more fully described herein. Having reviewed the relevant facts discovered in the course of the Division staff's investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

### **STATEMENT OF FACTS**

1. The Thornwater Company, L.P. (“Thornwater”) is a broker-dealer that was licensed by the Division from November 1995 until December 2001. Thornwater maintains its principal place of business at 99 Wall Street 11th Floor, New York, NY 10005.
2. Thomas Russo (“Russo”) is an individual who was employed by Thornwater as a broker-dealer agent from August 1998 until June 1999 and again from June 2000 until November 2000. Russo was licensed in Utah from September 1998 until June 1999. A separate action is pending against Russo.
3. James Hopkins (“Hopkins”) is an individual who was employed with Thornwater as a broker-dealer agent from October 1997 until October 2001. Hopkins was licensed with Thornwater in Utah from June 1999 through October 2001.
4. In August 2001, the Division received a complaint against Thornwater from James Garland (“Garland”). The complaint included allegations of trading on margin without authorization, being forced into signing a margin agreement, trading in “market-maker stocks” against his wishes, unauthorized trading, unsuitable recommendations and high-pressure, boiler-room sales tactics.
5. Garland’s account was opened by Russo and was later managed by James Hopkins (“Hopkins”) and Adam Harrington (“Harrington”). A separate action is pending against Hopkins and Harrington.

6. Garland told Russo, Hopkins and Harrington that they were not authorized to trade on margin, or place trades in market-maker stocks.
7. Russo managed Garland's account prior to starting at Thornwater. Garland transferred the account to Thornwater.
8. Russo managed the account for Garland until he left Thornwater in March 1999.
9. Account statements and trade confirmation provided to the Division by Garland verify that Russo placed six purchases in margin from January 1999 through March 1999 and Harrington placed ten purchases in margin from January 2000 through April 12, 2000.
10. In April 2000, a sales assistant called Garland and notified him that if he (Garland) did not sign a margin agreement his account would be sold out due to a margin call. Garland attempted to contact Harrington to discuss this but was unable to reach him. Garland reluctantly signed a margin application on April 12, 2000 and faxed it to Thornwater. Garland received 16 additional margin calls after April 12, 2000.
11. Although Garland never gave Thornwater or any of its agents discretionary authority on his account, Harrington placed numerous trades in Garland's account without Garland's knowledge.
12. Garland repeatedly asked Harrington to take him out of margin, however, Garland's requests were ignored and Harrington placed additional purchases in margin.

13. In addition, in recorded conversations, Hopkins and Harrington misrepresented material facts including, but not limited to:
  - a. Harrington said he had worked for the Securities and Exchange Commission (SEC);
  - b. Harrington said he had non-public information about stocks he was attempting to sell to and/or had sold to Garland; and
  - c. Hopkins claimed to be the President of Thornwater.
14. Concerned about his account, Garland called Thornwater and spoke to Chee Yang (“Yang”), the compliance manager. Yang asked Garland to make a written complaint with all the details. A copy of this complaint was sent to the Division in August 2001.
15. On December 10, 2001, Division auditors attempted to conduct an audit of Respondent including an examination of Respondent’s books and records. The auditors documented portions of their audit with a video tape.
16. Respondent stated that the Division could not videotape in its offices and refused to provide the books and records for examination until the videotape was surrendered.
17. The auditors refused to turn over the videotape and informed Respondent that its license in Utah would be suspended if Respondent did not provide the Division access to the books and records.

18. When Respondent refused to provide the books and records, the Division issued an Emergency Order to Suspend Respondent's license.
19. The Notice of Agency Action ("Notice") sent to Respondent provided Respondent 30 days to Respond to the Suspension and set a hearing date. The Notice warned that the suspension would become permanent if the Division did not receive a response and/or Respondent did not appear for the hearing.
20. Respondent did not file a response or appear at the hearing and on January 5, 2002, Respondent's were held in default and a permanent order of suspension was issued.
21. On March 11, 2002, Respondent filed a motion to set aside the default order. That motion was denied on March 13, 2002.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **(Securities Fraud under §61-1-1 of the Act)**

22. Section 61-1-1 of the Act states:

**It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:**

- (1) employ any device scheme or artifice to defraud;**
- (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or**

**(3) engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person.**

23. Employees of Respondent engaged in acts, practices and courses of business that operated as a fraud or deceit including:
- a. Trading on margin without proper documents on file;
  - b. Soliciting clients and placing trades in a state where individuals were not licensed;
  - c. Excessive trading for the purpose of generating commissions;
  - d. Failing to execute transactions;
  - e. Assisting agents in circumventing licensing laws by assigning a licensed “broker of record” but allowing an unlicensed agent to place trades.
24. Section R164-1-3 (1)(C) of the UAC lists certain acts that are “deemed fraudulent.” Included on this list is: (i) “effecting transactions in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including the use of boiler room tactics or use of fictitious or nominee accounts.”
25. Boiler room is defined by Barron’s Financial Guides Dictionary of Finance and Investment Terms as a:
- place where high-pressure salespeople use banks of telephones to call lists of potential investors (known in the trade as sucker lists) in order to peddle speculative, even fraudulent, securities. They are called boiler rooms because of the high-pressure selling. Boiler

room methods, if not illegal, clearly violate the National Association of Securities Dealers' Rules of Fair Practice, particularly those requiring that recommendations be suitable to a customer's account.


26. To the extent auditors were able to observe the business of Respondent, it appeared that Respondent was engaging in boiler-room tactics. This is consistent with the complaints alleged by Garland.

### **ORDER**

Pursuant to § 61-1-20 of the Act, the Director hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at the place, date and time set forth in the attached Notice of Agency Action. If Respondent fails to appear at the hearing, an Order may be issued, a fine may be imposed by default against Respondent as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondent may show cause, if any he has:

1. Why Respondent should not be found to have engaged in the violations alleged by the Division;
2. Why Respondent should not be ordered to cease and desist from engaging in any further violation of § 61-1-3(1) or any other section of the Act; and
3. Why Respondent should not be ordered to pay a fine to the Division in an amount of \$125,000.


**DATED** this 23<sup>rd</sup> day of September, 2002.

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S. Anthony Taggart  
Director  
Utah Division of Securities

Approved:

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Jeffrey Buckner  
Assistant Attorney General



Division of Securities  
Utah Department of Commerce  
160 East 300 South  
Box 146760  
Salt Lake City, UT 84114-6760  
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**IN THE MATTER OF:**

**The Thornwater Company, L.P., CRD  
#36195;**

**Respondents.**

**NOTICE OF AGENCY ACTION**

**Docket no. SD-02-0144**

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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Order to Show Cause.

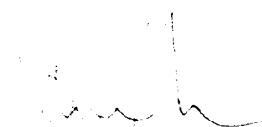
After your response is filed, a hearing will be set at a date and time agreed upon by the parties.

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default, an Order to Cease and Desist will enter, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11.

The presiding officer in this case is S. Anthony Taggart, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to a hearing. Should you so desire, please contact the Utah attorney General's Office. Question regarding the Order to Show Cause and Notice of Agency Action should be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

**DATED** this 22<sup>nd</sup> day of September, 2002.

  
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S. Anthony Taggart  
Director, Division of Securities  
Utah Department of Commerce

**Certificate of Mailing**

I certify that on the 23<sup>RD</sup> day of September, 2002, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

The Thornwater Company, L.P.

99 Wall Street

11<sup>th</sup> Floor

New York, NY 10005

Certified Mail # 70001670 00006025 3308

RAMONA RASZINSKI  
Executive Secretary